RECOMMENDATIONS TO THE JOINT LEGISLATIVE STUDY COMMISSION
ON THE MODERNIZATION OF THE BANKING LAW
Task Force on Banking Modernization of the NC Bar Association and
The Office of the Commissioner of Banks

1. Retain current Article 14.
2. Retain current Articles 17 and 17B.
3. Retain Article 18A.
4. § 53-1-2. A consensus was reached that the legislation should include language in one place addressing subsequent enactment or adoption of referenced federal laws or regulations rather than inserting such language at the point of each reference. The recommendation is to add a new subsection (e) to § 53-1-2 to read:
   "(e) Any reference in this Chapter to a state or federal law, regulation, or agency shall be deemed to refer to any replacement law or regulation or any successor agency, whether or not this Chapter explicitly provides for that reference."
5. Amend 53-1-3(b) and (b)(1) to properly reference "trust institutions."
   "(b) No person shall operate in this State as a "bank," "savings bank," "savings and loan association," "trust company," or otherwise as a depository institution or trust institution unless established as a depository institution or trust institution under the laws of this State or another State, or established under federal law. Unless so authorized, no person doing business in this State shall:
   (1) Use in its name the term "bank," "savings and loan," "savings bank," "banking company," "trust company," or words of similar meaning that lead the public reasonably to believe that it conducts the business of a depository institution or trust institution; or
   (2) Use any sign, letterhead, circular, or website content or advertise or communicate in any manner that would lead the public reasonably to believe that it conducts the business of a depository institution or trust institution.
   (c) Upon application by the Commissioner, a court of competent jurisdiction may issue an injunction to restrain any person from violating or from continuing to violate this section."
6. Change definition of "trust company" in 53-1-4(69) to match G.S. 53-301(a)(51).
   "(69) Trust Company. -- A trust institution that is neither a depository institution nor a foreign bank (as "foreign bank" is defined in 12 U.S.C. § 1813(s)(1), but not including a bank organized under the laws of a territory of the United States)."
7. Add a definition to § 53-1-4 of "State trust company" to match G.S. 53-301(a)(45).
   "( ) State Trust Company. -- A company organized under the provisions of Article 24 of this Chapter and a trust company previously organized under other provisions of Chapter 53 of the General Statutes to operate only as a trust company and not as a commercial bank."
8. Add a definition of "trust institution" to § 53-1-4 to match G.S. 53-301(a) (52).

"( ) Trust Institution -- Any company lawfully acting as a fiduciary in a state or in a foreign country."

9. Change "trust company" to "trust institution" in 53-2-7(b)(4) and (11) and 53-3-2(a)(3):
   Amend § 53-2-7(b)(4) by substituting the phrase "trust institution" for "trust company."
   Amend § 53-2-7(b)(11) by substituting the phrase "trust institutions" for "trust companies."
   Amend § 53-3-2(a)(3) by substituting the phrase "trust institution" for "trust company."
10. Change "trust company" to "State trust company" in 53-3-4(a)(9); also change "do" to "conduct" in such section:
    "(9) If the proposed bank intends to ~~do~~ conduct "trust business", as that term is defined in Chapter 53, it appears that trust powers should be granted based on consideration of the various factors set forth in Chapter 53 for considering applications and setting capital for a State trust company."
11. Delete § 53-6-5 because the topic is dealt with better elsewhere in the General Statutes and the proposed language creates more questions than it answers.
    Amend Article 6A by deleting proposed § 53-6-5.
12. § 53-1-4(4): Clarify definition of "Bank:
    "(4): Bank. – Any corporation, other than a credit union, savings institution, or trust institution ~~company~~, that is organized under the laws of this State and is engaged in the business of receiving deposits, paying monies and making loans."
13. The proposed law unintentionally stripped banks of the authority to rent out excess office space, so the definition in § 53-1-4(6) should be amended as follows:
    "(6) Bank Premises. – Any improved or unimproved real estate, whether or not open to the public, which is utilized or intended to be utilized by a bank, including additional space to rent as a source of income."
14. A new definition of "Banking Laws" should be added to § 53-1-4 to read:
    "(_)Banking Laws -- All laws the Commissioner or OCOB is authorized to enforce under any applicable statute."
15. For clarity and to better conform to federal treatment, the definition of capital in § 53-1-4(11) should be revised to read:
    "(11) Capital. – An amount equal to the bank's "~~Tier 1~~ total capital", as such term is ~~defined~~ used by the FDIC in 12 CFR Part 325 ~~of the Regulations of the FDIC~~; provided, that if the term "~~Tier 1~~ total capital" is replaced by a term including substantially the same ~~components~~ elements as "~~Tier 1~~ total capital", the term "capital" as used in this Chapter shall mean an amount equal to the amount calculated by application of the definition of such replacement term."
16. Rewrite 53-1-4(43): Lower-Tier Subsidiary. – Any bank operating subsidiary in which a bank ~~operating~~ subsidiary has an equity ownership interest.
17. § 53-1-4(45): The definition of nonbranch bank business office needs to be expanded to cover federally chartered depository institutions:

(45) Nonbranch Bank Business Office. – Any staffed physical location open to the public in this State in which an office of a bank, out-of-State bank~~, or~~ a depository institution established under the laws of another State, or a federally chartered institution that is not a branch, an office of a separately organized subsidiary of such depository institution, or an office of the holding company of such depository institution, at which one or more banking or banking-related products or services are offered, other than the taking of deposits. The provision of remote deposit capture facilities or services by a nonbranch bank business office shall not be deemed to be a taking of deposits. Nonbranch bank business offices include loan production offices, mortgage loan offices, and insurance agency offices, or a combination thereof.

18. To address an important issue under securities laws, the definition in § 53-1-4(46) should be amended as follows:

"(46) North Carolina Financial Institution. – A bank, savings institution, or trust company organized under the laws of this State. For purposes of the Securities Act of 1933 and the Securities Exchange Act of 1934, any North Carolina financial institution is a banking institution."

19. § 53-1-4(55): The definition of a practical banker currently allows a former director, officer or significant shareholder to serve on the Commission but does not permit a current director, officer or significant shareholder to leave his or her position once appointed to the Commission:

(55) Practical Banker. – An individual who at the time of appointment to the Commission~~, and at all times thereafter,~~ is, or has been during the five years preceding the appointment, a president, chief executive officer, director, or holder of five percent (5%) or more of any class of voting securities of a North Carolina financial institution.

20. § 53-1-4(58): The definition of public notice provides that all newspaper notices will be published in the county of a bank's principal office. This location may not be appropriate for all notices (e.g., a change of location of a branch). The location for each public notice should be specified either in this Chapter or by rule:

(58) Public Notice. – Notice to the public by (a) a single publication in a newspaper of general circulation in the county in which the bank which is the subject of the publication has its principle office or in such other county as may be directed by the Commissioner to best meet the purpose for which the notice is required and (b) a posting in the notices section of the Commissioner's website for at least 15 days, in each case of the applicable information specified for such publication or posting in this Chapter.

21. § 53-1-4(63): The definition of shareholder should be changed to match Chapter 55 (North Carolina Business Corporation Act):

(63) Shareholder. – Any person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

22. § 53-1-4(71): The definition of voting security is drafted too broadly to include holders of equity or debt that may vote "on any matter." The definition should be revised to be consistent with original intent:

"(71) Voting Security. –A security that (i) confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the company or (ii) is convertible into, or entitles the holder to receive upon its exercise, a security that confers such a right to vote."

23. The proposed law does not contain definitions for "well-capitalized" and "well-managed" as used in 53-5-1(e)(2). These important concepts should be defined to conform with federal treatment:

"(__) Well managed - Except as otherwise provided in this Chapter, a company or depository institution is well managed if:

a. at its most recent examination, the company or institution received at least a satisfactory composite rating and at least a satisfactory rating for management, if such rating is given.

b. in the case of a company or depository institution that has not received an inspection or examination rating, a company or depository institution is well managed if the Commissioner has determined, after a review of the managerial and other resources of the company or depository institution and after consulting with any other appropriate bank supervisory agency for the company or institution, that the company or institution is well managed.

A depository institution that results from the merger of two or more depository institutions that are well managed shall be considered to be well managed unless the Commissioner determines otherwise after consulting with any other appropriate bank supervisory agency for each depository institution involved in the merger. A depository institution that results from the merger of a depository institution that is well managed with one or more depository institutions that are not well managed or have not been examined shall be considered to be well managed if the Commissioner determines, after a review of the managerial and other resources of the resulting depository institution and after consulting with any other appropriate bank supervisory agency for the institutions involved in the merger, as applicable, that the resulting institution is well managed."

"(__) Well capitalized – As defined in Regulation Y of the Federal Reserve Board, 12 C.F.R. 225.2(r)."

24. § 53-2-1(c): In order to ensure that this statute does not conflict with federal or state law, an additional qualification should be added:

"(c) ~~No~~ Except as required by state or federal law, no member of the Commission shall divulge or make use of any information designated by this Chapter or

by the Commissioner as confidential, and no member shall give out any such information unless the information shall be required of the member at a hearing at which the member is duly subpoenaed or by a court of competent jurisdiction."

25. § 53-2-3(a) provides for the removal, but not the appointment, of any Deputy Commissioner.

"(a) The Commissioner shall be assisted in the performance of the duties of office by (i) one or more deputy commissioners, and (ii) Examiners, investigators, counsel and other employees under the supervision of the Commissioner, all of whom, together with the Commissioner shall comprise the "Office of the Commissioner of Banks." In addition, the work the OCOB may be conducted by employees of other agencies of government, and agents and independent contractors of the OCOB. The Commissioner may <u>appoint or</u> remove at his or her discretion any deputy commissioner."

26. § 53-2-6(b): With the reduction in size of the State Banking Commission, it will be increasingly difficult to meet the requirement of five members for the appellate review panel, so the requirement should be reduced to three:

"(b) Upon an appeal to the Commission by any party from an order entered by the Commissioner following an administrative hearing pursuant to Article 3A of Chapter 150B of the General Statutes, the chairman of the Commission may appoint an appellate review panel of not less than ~~five~~ <u>three</u> members to review the record on appeal, hear oral arguments, and make a recommended decision to the Commission. "

27. § 53-2-7(b)(3): The NCBA Task Force recommends replacing the description of personal records to be consistent with language used by the federal Gramm-Leach-Bliley Act:

"(3) ~~Records containing the names or other personal information of any customers of any person or revealing the collateral given by any such customers in connection with an extension of credit~~ <u>Records containing nonpublic personal information about a customer, whether in paper, electronic, or other form, that is maintained by or on behalf of the financial institution</u>; provided, however, that every report made by a North Carolina financial institution, with respect to a transaction between it and an officer, director or affiliate thereof, which report is required to be filed with the Commissioner pursuant to this Chapter, shall be filed with the Commissioner in a form prescribed by him or her and shall be open to inspection and copying by any person;"

28. § 53-3-2(c): A proposed bank should be permitted to pay organizational expenses from its escrow account and undertake other actions in preparation of becoming a chartered bank. The section should clarify how the escrow account is established and add exceptions for the removal of funds:

"(c) Unless and until the Commissioner issues the proposed bank a charter:

(1) The proposed bank shall not transact any business except such as is incidental and necessary to its organization ~~and~~ or the application for a charter or preparation for commencing in the business of banking;

(2) All funds paid for shares of the proposed bank shall be placed in escrow under a~~n~~ written escrow ~~agreement, and~~ with a~~n~~ third party escrow agent, ~~approved by~~ satisfactory to the Commissioner; and

(3) All funds for shares placed into escrow, and all dividends or interest on such funds, may be removed from escrow only with the Commissioner's approval except to the extent that such funds are refunded to subscribers or as otherwise required by law."

29. § 53-3-4(a)(3): The term "legal tender" is a broad term that includes other forms of payment other than currency; this section should also clarify that the currency payment requirement only applies at the time of organization:

" (3) All payments for purchases of shares in a bank in organization are made in ~~legal tender of the~~ United States currency."

30. § 53-3-4(a)(6): The threshold of ownership of voting securities in this section should be raised consistent with federal law:

"(6) The character, competence and experience of the organizers, proposed directors, proposed officers, and initial holders of more than ~~five~~ ten percent of the voting securities of the proposed bank will command the confidence of the public;"

31. The changes to 53-3-6(a) set forth below clarify who recommends the conditions for issuance of a charter and when action is to be taken by the Commission on charter applications:

"(a) The Commission shall consider the findings and order of the Commissioner, oral testimony, and any other information and evidence, either written or oral, that comes before it at the public hearing to review the Commissioner's approval of an application for a charter. The Commission may adjourn and reconvene the public hearing in unusual circumstances. The Commission shall affirm or reverse the Commissioner's order. The Commission may adopt the Commissioner's recommendation with respect to conditions for issuance of a charter, or it may modify the ~~recommended~~ conditions recommended by the Commissioner. The Commission shall render its decision ~~within 30 days after the~~ at the ~~completion of the~~ public hearing, unless unusual circumstances require postponement of the decision. The Commission's review shall be limited to a determination of whether the criteria set forth in G.S. 53-3-4 have been met and whether the provisions of this Article have been followed."

32. § 53-3-7(a)(1 should be revised to be consistent with 53-3-4(a)(3):

"(1) Has received ~~cash~~ payment in United States currency for the purchase of shares and will have satisfactory required capital upon commencing business, in

each case in at least the amount required by the Commission's order approving the application;"

33. § 53-4-3(a): There is an ambiguity in this section on whether the additional committees that the board deems appropriate must be appointed:

"(a) The board of directors shall appoint, at a minimum, an audit committee, an executive committee, a loan committee (which may be the executive committee or the board of directors as a whole), and may appoint such other committees as it deems appropriate to provide for the safe and sound operation of the bank in a manner consistent with applicable laws and regulations."

34. § 53-4-5(c)'s requirement that a director appoint an agent for service of process in Wake County may be too broad and may have unintended consequences. We recommend the following revision:

"(c) A director must either:

(1) appoint an agent in Wake County, North Carolina, for service of process; or

(2) consent, on a form satisfactory to the Commissioner, that

(i) the Commissioner may serve as the director's agent for service of process, and

(ii) the director consents to jurisdiction in Wake County, North Carolina, but only for purposes of any action or proceeding brought by the Commissioner."

35. § 53-4-6: This section appears to create a private right of action rather than limiting the liability of directors to actions where directors are liable under a separate right of action. Article 24 of Chapter 53 provides a good model to achieve the purposes we understand are desired. We strongly recommend that 53-4-6 be rewritten to read as follows:

"(a) The standard of conduct for directors shall be as set forth in G.S. 55-8-30.

(b) Any director of a bank who shall knowingly violate, or who shall knowingly permit to be violated by any officers, agents, or employees of such bank, any of the provisions of this Chapter shall be held personally and individually liable for all damages which the bank, its shareholders, or any other person has sustained in consequence of the violation. Any aggrieved shareholder of any bank in liquidation may prosecute an action for the enforcement of the provisions of this section. Only one such action may be brought."

36. § 53-4-10 should be conformed with § 53-4-3 and add authority for the OCOB to review a bank's compliance with a code of ethics:

"As part of its examination of a bank, OCOB may assess the competence, composition, structure and conduct of such bank's board of directors, including, without limiting the generality of the foregoing: (i) number of directors; (ii) independence of directors; (iii)

compliance with the bank's code of ethics; (iv) committee structure of the board; and ~~(iv)~~(v) education and training of board members. In making such assessment, OCOB shall take into consideration ~~the size, complexity and business operations of the bank as well as~~ publicly issued regulations and guidance of the Commissioner and the bank's primary federal supervisor and may consider, among other factors, the asset size of the bank, the range and complexity of the activities in which the bank is engaged, the various risks undertaken by the bank, the experience and abilities of the bank's directors and officers, and the adequacy of the bank's existing policies, procedures and internal controls. Such assessment shall be part of the overall assessment of the bank's management and of whether the bank is operating in a safe and sound manner."

37. § 53-4-11(c)(1) should be revised to be consistent with 53-3-4(a)(3).
"(1) Cash on hand, which shall include both ~~lawful money of the~~ United States currency and exchange of any clearing house association or similar intermediary;"
38. § 53-4-12(a)(1)a. should be revised to clarify which committee is referenced:
a. An audit, loan review, or compliance committee appointed by the board of directors of a bank, or any other person to the extent the person acts at the direction of or reports to ~~a compliance review~~ such a committee; and
39. To address historical misinterpretations in this area, § 53-5-1, line 2, should read: "In addition, and not by way of limitation, a bank shall have the power to:"
40. § 53-5-1(b)(4) includes a reference to the trust business which is unnecessary and confusing:
~~(4) In the trust business; and~~
41. The cross-reference in § 53-5-1(e)(1)(a) to "subsections (a) and (b)" should refer to "subsections (a), (b) and (c)."
42. § 53-6-14(b) should be revised to conform to the language in 53-6-14(c) as that was previously amended by the Study Commission:
"(b) Any tangible form of a record shall be deemed for all purposes to be an original record and shall be admissible in evidence in all courts and administrative agencies in this State, if otherwise admissible, and the bank may destroy or otherwise dispose of the original form of the record; provided, however, that a bank shall retain either the originals or convertible form of its records for such period as may be required by law or by rule or order of the Commissioner. Any bank may dispose of any original or convertible form of a record that has been retained for the period prescribed by law or by rule or order of the Commissioner for its class."
43. § 53-6-17: The 30-day notice posted at a branch prior to its closing that is required by current Chapter 53 should be retained in the proposed rewrite:
"A bank may close a branch upon ~~first~~ providing written notice to the Commissioner and the customers of the branch at least 90 days prior to the proposed closing, such notice to include the date the branch will close, and posting in a conspicuous manner on the branch premises a notice of its intent to close the branch for a period of 30 days prior to

the proposed closing date. However, the consolidation of two or more branches into a single location in the same vicinity shall not be considered a closure subject to the 90-day and 30-day notice requirements of this section. To be considered a consolidation, the bank shall request consolidation treatment from the Commissioner, who shall decide, in his or her discretion, whether the branches to be consolidated are considered to be in the same vicinity, with due consideration to the distance between the branches and the nature of the market in which the branches are situated."

44. § 53-6-18(a)(2): Clarify that a branch may not qualify as a nonbranch bank business office just by offering nonbanking business at that location:
"(2) If a proposed nonbranch bank business office will offer ~~a~~ only products, services or other types of business already engaged in by the bank, the bank shall provide the Commissioner with written notification of the intent to open the office."
45. Retain Articles 17 and 17B and delete proposed G.S. § 53-6-20. Dodd-Frank does authorize *de novo* interstate branching, but retaining these sections remains important for interstate mergers and for acquisitions of existing branches. The reference to "as permitted by federal law" in G.S. § 53-6-20 leaves a circularity with respect to existing branches, as federal law refers to state law on that topic.
Delete § 53-6-20.
46. § 53-7-101(c): Unlike current state and federal law, this subsection does not except bona fide gifts, so all gifts that might change control would require an application and public notice. The exception in subdivision (4) for proxy solicitations is strange. The proxy statement is not itself the change of control.
"(4) ~~Proxy solicitations by or on behalf of the bank.~~ *Bona fide* gifts."
47. § 53-7-201: This provision needs to clarify that a bank may merge with a non-depository institution as long as the bank is the surviving entity:
"§ 53-7-201. Combination authority.
With the approval of the Commissioner, a bank may combine with one or more depository institutions or non-depository institutions, provided that the bank is the surviving entity in any combination with a non-depository institution. The application for approval shall be in the form required by the Commissioner and shall be accompanied by a fee as set forth by rule."
48. The substance of § 53-7-205 and § 53-7-207(d) should be eliminated. The concept here is already covered more fully in N.C.G.S. § 55-11-06.
Delete § 53-7-207(d) and replace proposed § 53-7-205 with the following language which carries forward the content of current § 53-17, which is not otherwise picked up in the new law:
"§ 53-7-205. Fiduciary powers and liabilities of North Carolina financial institutions combining or transferring assets and liabilities.
Whenever any North Carolina financial institution or federally chartered institution doing business in this State shall combine with or shall sell to and transfer its assets and

liabilities to any other bank, trust institution, savings institution, or other company, as provided by the laws of North Carolina or the United States, all the then existing fiduciary rights, powers, duties and liabilities of the combining transferring institution, including the rights, powers, duties and liabilities as executor, administrator, guardian, trustee, and/or any other fiduciary capacity, whether under appointment by order of court, will, deed, or other instrument, shall, upon the effective date of such combination or sale and transfer, vest in, devolve upon, and thereafter be performed by, the surviving or transferee company, and such latter institution shall be deemed substituted for and shall have all the rights and powers of the transferring institution."

49. § 53-7-207 does not currently permit a combination that is structured as a reverse triangular merger and is unclear about certain other types of combinations. It should be rewritten to read:

"§ 53-7-207. Combination with a subsidiary.

(a) (1) With the approval of the Commissioner, a bank may:

(i) combine with a subsidiary so long as ~~the~~a bank is the resulting entity of the combination;

(ii) ~~and may~~ combine a subsidiary with another company if a subsidiary is the resulting entity; or ~~with a subsidiary so long as the subsidiary of the bank is the resulting entity of the combination.~~

(iii) combine two or more subsidiaries of two or more banks under common control of the same holding company.

(2) The approval of the Commissioner is not required for:

(i) ~~A~~a combination of a subsidiary and another company when a subsidiary is not the resulting entity, which shall be effected in accordance with organizational law applicable to each~~.~~; or

(ii) ~~The~~a combination of two or more subsidiaries of the same bank. ~~is exempt from the provisions of this section.~~

(b) The bank seeking approval of the combination shall file with the Commissioner an application for approval, ~~copies of the agreement under which the bank proposes to effect the combination,~~ and such additional information as the Commissioner shall require by rule or as is required by the Commissioner in connection with the application in order to achieve the objectives of this Chapter. The bank shall pay to the Commissioner a fee ~~of one thousand dollars ($1,000.00).~~ as set forth by rule."

50. § 53-7-303(c) and (d): Since § 53-7-303(a) permits a bank to convert to another depository institution under North Carolina law, the bank that is converted to another depository institution may not cease to exist as an entity chartered under North Carolina law:

"(c) Upon effectiveness of the conversion, the resulting depository institution shall cease to be a bank ~~and shall cease to exist as an entity chartered under the laws of this State~~.

(d) Upon the effective date of the conversion, all rights, liabilities and obligations of whatever kind of the bank shall continue and remain in its new form of

organization as a depository institution organized under the laws of this state, another state or the United States. All actions and proceedings to which the bank was party prior to conversion shall be unaffected by the conversion and shall proceed as if the conversion had not been effected."

51. § 53-8-1(a): There are many laws that are not applicable to banks, and various banking laws are applicable to some banks but not others. The new definition of banking laws should be referenced and this subsection rewritten using that defined term:

"(a) Every bank shall be under the supervision of the Commissioner. It shall be the Commissioner's duty to enforce through the employees and agents of the OCOB ~~all laws relating to banks.~~ the banking laws. All banks shall conduct their business in a manner consistent with ~~all laws, rules, and orders relating to banking.~~ the banking laws."

52. § 53-8-1(b): The list of regulatory enforcement actions in this section should be revised for greater clarity:

"(b) The Commissioner may enter into written agreements, cease and desist order stipulations, ~~consensual~~ cease and desist orders, consent orders, and similar arrangements with banks and their holding companies, or either of them; may request resolutions be approved by boards of directors of banks and their holding companies, or either of them; and may take other similar ~~consensual~~ corrective actions."

53. § 53-8-6(c): This provision presents constitutional issues. A court must have discretion when it reviews the Commissioner's application to compel compliance by proceedings for contempt:

"(c) If a person fails to comply with a subpoena so issued or a party or witness refuses to testify on any matters, a court of competent jurisdiction, on the application of the Commissioner, ~~shall~~ may compel compliance by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from the court or a refusal to testify in the court."

54. The references in 53-8-12(c)(1) and (2), (f) and (h) should be expanded to include all entities under the jurisdiction of the Commissioner:

"(c) In addition to any other powers conferred by this Chapter, the Commissioner shall have the power to:

(1) Order any bank, trust company, or subsidiary thereof, or any director, officer, or employee, or any other person the Commissioner is authorized to regulate, to cease and desist violating any provision of this Chapter or any lawful rule issued thereunder.

(2) Order any bank, trust company, or subsidiary thereof, or any director, officer, or employee, or any other person the Commissioner is authorized to regulate, to cease and desist from a course of conduct that is unsafe or unsound and which is likely to cause insolvency or dissipation of assets or is likely to jeopardize or otherwise seriously prejudice the interests of a depositor."

. . . . .

"(f) The Commissioner may impose a civil money penalty of not more than one thousand dollars ($1,000.00) for each violation by any bank, trust company, or subsidiary thereof, or any director, officer, or employee, or any other person the Commissioner is authorized to regulate, of an order issued under subdivision (1) of subsection (c) of this section. The Commissioner may impose a civil money penalty of not more than five hundred dollars ($500.00) per day for each day that a bank, trust company, or subsidiary thereof, or any director, officer, or employee, or any other person the Commissioner is authorized to regulate, violates a cease and desist order issued under subdivision (2) of subsection (c) of this section. The proceeds of civil money penalties imposed pursuant to this subsection, net of documented expenses of examination and enforcement shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with 20 G.S. 115C-457.2."

. . . . .

"(h) Notwithstanding any penalty imposed by the Commissioner, the Commission may after notice of and opportunity for hearing, impose, enter judgment for, and enforce by appropriate process, a penalty of not more than ten thousand dollars ($10,000.00) against any bank, trust company, or subsidiary thereof, or against any of its directors, officers, or employees, or any other person the Commissioner is authorized to regulate, for violating any lawful order of the Commission or Commissioner. The proceeds of civil money penalties imposed pursuant to this subsection, net of documented expenses of examination and enforcement shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

55. The phrase "Trust terminated" in the title of § 53-9-403 should be changed to "Authority to serve as trustee terminated."
"§ 53-9-403. Authority to serve as trustee terminated."
56. As was the case with § 53-7-101(c), § 53-10-102(c) differs from federal law and other state law in that it does not except bona fide gifts, so all gifts that might change control would require an application and public notice. The exception for proxy solicitations is unnecessary as the proxy statement is not itself the change of control.
"(3) ~~Proxy solicitations by or on behalf of the bank.~~ *Bona fide* gifts."
57. § 53-10-301 gives the Commissioner the authority to order a bank holding company to cease and desist from any activity that "may be in violation of any laws of this state." Reference should instead be made to the newly defined "banking laws."
§ 53-10-301. Cease and desist orders.

Upon a finding that any action of a holding company subject to this Article may be in violation of any banking laws ~~of this State~~, the Commissioner, after a reasonable notice to the holding company and an opportunity for it to be heard, shall have the

authority to order it to cease and desist from such action. If the state holding company fails to appeal such decision within 10 days of the date of the issuance of the order in accordance with G.S. 53C-2-6 and continues to engage in such action in violation of the Commissioner's order to cease and desist such action, it should be subject to a civil money penalty of twenty thousand dollars ($20,000) for each day it remains in violation of ~~the laws of this State~~ such order. The penalty provision of this section shall be in addition to and not in lieu of any other provision of law applicable to a state holding company's failure to comply with an order of the Commissioner. The clear proceeds of such civil money penalty shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.